IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII Rule 32(2) (b)

Description of the case.

Writ Petition No. 234 of 2006 (S/B)

Date of decision: 30th August, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL, AT NAINITAL

Writ Petition No. 234 of 2006 (S/B)

Dhananjay Prasad S/o Late Sri B.P. Choudhary,
R/o 19 Indira Nagar Colony,
Dehradun. …….. Petitioner

Versus

1. State of Uttaranchal through its Secretary, Sachivalaya, Department of Forest, Uttaranchal State, Dehradun.
2. Principal Chief Conservator of Forests, Uttaranchal, 85 Rajpur Road, Dehradun.
3. Additional Principal Chief Conservator of Forests (Project), also acting as Chairperson / Adhyaksha, Transfer Committee.
4. Veena Sekhari, Chief Conservator of Forests, Garhwal, 85 Rajpur Road, Dehradun.
5. Divisional Forest Officer, Haridwar Forest Division, Bilakeshwar Colony, Haridwar. …… Respondents

Mr. Anil Dabral, Advocate for the petitioner.
Mr. N.B. Tewari, Chief Standing Counsel for the respondents.

JUDGMENT

Coram: Hon'ble Rajeev Gupta, C.J.
Hon'ble J.C.S. Rawat, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. Anil Dabral, Advocate for the petitioner.

Mr. N.B. Tewari, Chief Standing Counsel for the respondents.

They are heard.

2. Petitioner Dhananjay Prasad has filed this writ petition for the following reliefs:

> "A. To issue a writ order or direction in the nature of certiorari for quashing the impugned order dated 6.7.2006 (Annexure No. 1) passed by Respondent No. 2 and further direct the respondents to consider the case of the Petitioner for posting in or near Dehradun in light of the transfer policy and Government Order dated 27.6.2006.

B. To issue any other suitable writ order or direction as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

C. To award the cost of the writ Petition in favour of the petitioners.

D. To issue a writ order or direction in the nature of certiorari quashing the order dated 11.08.2006 (Annexure 14) passed by respondent No. 5.

E. To issue a writ order or direction in the nature of mandamus directing the respondents not to relieve the petitioner in pursuance of order dated 11.08.2006 from his present place of posting till the pendency of present writ petition."

3. The petitioner, in substance, is challenging his transfer from Laksar Range, Haridwar to Tons Range, Purola vide order dated 06.07.2006 (Annexure No. 1).

4. The petitioner's challenge is mainly founded on the plea that he has been transferred malafidely at the behest of respondent No. 4 Veena Sekhari, Chief Conservator of Forest, Dehradun. In support of his above plea, the learned counsel for the petitioner invited our attention to the letter dated 05.07.2006 sent by respondent No. 4 Chief Conservator of Forest, Dehradun to Principal Chief Conservator of Forest, Dehradun. In this letter respondent No. 4 has expressed her opinion that the petitioner may not be suitable for Dehradun range as it is a sensitive forest range and as such the petitioner may be posted either at Tons Range or a nearby range.

5. The respondents, in their counter affidavit, have justified the order of petitioner's transfer. Para 2 of the counter affidavit reads as follows:

"2. That the contents of para 1 of the writ petition, which pertain to the challenge made by the petitioner by way of the present writ petition against the Annexure-1 transfer order dated 6/7/2006 are matters of record. However, it may be submitted in the very beginning that the allegations made by the petitioner against the respondents in regard to his impugned transfer are absolutely erroneous and baseless and his

writ petition has no merit whatsoever. The allegation of the petitioner that he has been transferred on the dictates of the 4th respondent Smt. Veena Sekhari, Chief Conservator of Forests, Garhwal is frivolous and ridiculous inasmuch as the transfer order has been issued by the 2nd respondent Principal Chief Conservator of Forests, Uttaranchal, Dehradun who is the Head of Department and the transfer has been made on the recommendation of the Transfer Committee. It goes without saying that the 4th respondent is subordinate to both the 2nd respondent as well as the Transfer Committee and therefore, there cannot be any question of transferring the petitioner on the basis of any letter of the 4th respondent as alleged by the petitioner. The fact of the matter is that in pursuance of a letter of the higher authority asking the 4th respondent to submit her report regarding three Range Officers including the petitioner, the 4th respondent submitted her comments to the effect that in view of the inquiries pending against the petitioner, he may either be transferred to Tons Forest Division, Purola where there was a vacancy or anywhere else. The Transfer Committee taking note of the fact that there were complaints against the petitioner and the matter was being inquired recommended for the petitioner's transfer to Tons forest division, Purola and accordingly the competent authority i.e. the 2nd respondent Principal Chief Conservator of Forests, Uttaranchal, Dehradun vide the impugned order dated 6/7/2006 transferred the petitioner from Haridwar Forest Division to Tons Forest Division. Thus, the transfer order does not suffer from any infirmity whatsoever and the writ petition is liable to be summarily rejected with costs.

For ready reference and kind perusal of the Hon'ble Court copies of the two complaints dated 25/5/2006 and 21/6/2006 are being filed herewith and marked as ***Annexure No. CA-1 & CA-2*** respectively to this affidavit."

6. For a better appreciation of the petitioner's grievances about his transfer, the averments in para 8 of the counter affidavit relating to his previous postings are relevant, which reads as follows:

"8. That the contents of para 8 of the writ petition are admitted. However, it is pertinent to bring to the kind notice of the Hon'ble court that the petitioner has served mostly in Dehradun district. He was posted in the Ramgarh Range of Rajaji National Park from

November 1995 to September 2001, having his headquarter at Dehradun. Thereafter the petitioner was posted in the office of Sub-Divisional Officer, Kalsi of Chakrata forest Division, having its headquarter at Kalsi, District Dehradun. Subsequently, the petitioner was posted in the office of Sub Divisional Officer, Kalsi of Chakrata Forest Division. In the year 2002 the petitioner was posted at Mussoorie Forest Division, having its headquarter at Mussoorie, District Dehradun. The aforesaid facts are revealed from the petitioner's own documents (Annexures – 3, 6 & 7 to the writ petition)."

7. The Apex Court in the case of **Major General J.K. Bansal Vs. Union of India and others** reported in **(2005) 7 SCC 227,** while considering the scope of interference by the Courts in the matter of transfer of Government Servants, observed in paras 9 to 11"

"9. In Shilpi Bose v. State of Bihar the appellants, who were lady teachers in primary schools, were transferred on their requests to places where their husbands were posted. The contesting respondents, who were displaced by the appellants, challenged the validity of the transfer orders before the High Court by filing a writ petition under Article 226 of the Constitution, which was allowed and the transfer orders were quashed. This Court allowed the appeal and set aside the judgment of the High Court by observing as under:

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department."

10. In Union of India v. S.L. Abbas the respondent was working at Shillong in the office of the Botanical Survey of India and his wife was also working there in a Central Government office. He was transferred from Shillong to Pauri in the hills of U.P. (now in Uttaranchal). He challenged the transfer order before the Central Administrative Tribunal on medical ground and also on the ground of violation of guidelines contained in the Government of India OM dated 3-4-1986. The Tribunal allowed the petition and quashed the transfer

order. in appeal this Court set aside the order of the Tribunal and observed as under:

> *"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the government employee a legally enforceable right.*
>
> 11. Similar view has been taken in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan wherein it has been held that no government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in public administration. Unless and order of transfer is shown to be an outcome of mala fide exercise of power or stated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals cannot interfere with such orders, as though they were the Appellate Authorities substituting their own decision for that of the management."

8. Thus, the scope of judicial scrutiny in the matters relating to the transfer of Government servants is too narrow. Petitioner Dhananjay Prasad has been at Laksar Range for the last about 2½ years. If the competent authority found it necessary to transfer the petitioner from his present place of posting, there is hardly any scope for interference by the Courts.

9. Since respondent No. 4 Chief Conservator of Forest is a superior officer in the hierarchy of the petitioner's department, we do not find any malafides on her part in expressing her opinion, when sought by her superior officer, about the suitability or otherwise of the petitioner's posting at Dehradun Range, which is considered to be a sensitive range. Thus, the petitioner has failed in establishing any

malafides on the part of respondent No. 4 or the authority passing the impugned order of transfer.

10. We, therefore, do not find any illegality or infirmity in the impugned order of petitioner's transfer.

11. The writ petition, therefore, is liable to be dismissed and is hereby dismissed.

(J.C.S. Rawat, J.) **(Rajeev Gupta, C. J.)**
30.08.2006 30.08.2006

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